

Judicial Protection of IPR in China

—Intellectual Property Rights In China—

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A Discuss on Equitable Remedies

Dear Jiang Zhipei:

Thank you for providing such a wonderful, informative personal website on IP legal issues.

In your Article on Patent Claim/Petition dated in March, 2000, the discussion over the application of "injunction a remedy/relief prior to trial in patent cases really interests me.

As you addressed in the Article, an injunction prior to trial (Interlocutory injunction ?) has long been applied in Common Law jurisdictions, such as UK, USA. It was originally from the regime of Equity. When a British court considering the application of principles in Equity, which is still independent to common law, an American court already tried to award an injunction, with less hesitation, as an effective remedy in different kind of cases.

Equitable remedies, including injunction, part performance, restitution, etc, pay more attention on unjust enrichment especially in business activities. This extensive application is due to the development of Equity, Trust in the decades. Just because common law is too harsh—when considering it provides only "damages" as remedy. Equitable remedies are welcome especially in the USA.

Although China's legal system is not common law system, it has adopted some foreign legal concepts or principles into its own laws. At this point, it is also worthy for China to study on Equity principles. In addition, common principles, including Equity have been applied into the WTO dispute panel in resolving the disputes among members.

Wish our patent law and its practice/development in China very very successful.